Supreme Court, U.S.
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No. 98-1940

IN THE

Supreme Court of the United States

ELIZABETH PITTMAN, A MINOR UNDER 18 YEARS OF AGE BY FREDERICK PITTMAN HER FATHER AND LEGAL CUSTODIAN, AND FREDERICK PITTMAN, INDIVIDUALLY,

Petitioners,

v.

ICELANDAIR, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 2

I. The Question Presented In The Petition Was Raised And Decided By Both Courts Below 2

II. The Decision Below Was Not "Dependent Upon An Interpretation Of New York Law" Or "Factbound" 4

III. The Issues Presented By This Case Are Very Important To The Welfare Of American Spouses And Their Children Who Fear Kidnapping By A Foreign Citizen Parent 5

CONCLUSION 6

TABLE OF AUTHORITIES

Page(s)

Cases:

Boyle v. United Technologies Corp.,
487 U.S. 500 (1988) 2

Rose v. Rose,
481 U.S. 619 (1987) 3-4

Statutes and Regulations:

49 U.S.C. § 44902 4

14 C.F.R. § 243.7 4

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PETITIONERS' REPLY BRIEF

INTRODUCTION

The Second Circuit invalidated a $15 million jury verdict against an airline that surreptitiously transported a woman who was kidnapping her children in violation of two custody orders. The justification for allowing the airline to defeat a father's state-law tort claim was a legal proposition that violates federal law.

Icelandair does not argue that the "general duty" relied on by *both* the District Court and the Court of Appeals (*see* Pet. App. 25a & 33a) was not an essential basis for the lower courts' holdings that the plaintiffs were not entitled to recover. Nor does Icelandair contend that the invented duty to carry passengers regardless of whether the names on their tickets match their reservations and their passports is consistent with federal safety statutes and regulations. Icelandair chooses instead to mischaracterize petitioners' position as an attempt to obtain relief on a federal claim. Petitioners did not assert a federal cause of action, but they seek relief in this Court because their state claim was rejected on a ground that violates federal law. Our petition parallels the petition in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), where the plaintiff had prevailed on a complaint asserting a claim under Virginia tort law. After the court of appeals held the defendant was entitled to a judgment notwithstanding the verdict due to insufficient evidence *and* because of a federal common law defense for military contractors, the Supreme Court granted certiorari to review the consistency of the defense recognized by the court of appeals with federal law. *Id.*

ARGUMENT

I

THE QUESTION PRESENTED IN THE PETITION WAS RAISED AND DECIDED BY BOTH COURTS BELOW

Icelandair asserts that the question presented in the petition was neither raised nor decided below. Brief in Opp. at 7-9. But throughout this litigation, petitioners have maintained that Icelandair wrongfully transported passengers whose tickets were purchased but whose names were not the same as those on their tickets. The District Court responded to this argument by saying (Pet. App. 33a-34a):

> Here, Icelandair had a duty to transport anyone who sought to use its services and was not free to refuse to transport Erna Pittman and her daughters simply because Mr. Grayson stated that there was a court order prohibiting her from removing them from Florida. While an airline does by statute have the right to refuse to transport someone who may pose a risk to himself or other passengers, the statutory exception is narrowly drawn. *See* 49 U.S.C.A. § 41310 (West 1997).

Petitioners' opening brief in the Second Circuit challenged the District Court's imposition of a "general duty" on airlines by arguing that "given the travel documents that Erna presented, Icelandair had an obligation to deny her access to Flight 614 with the girls." Brief of Appellant at 33. Nonetheless, the Second Circuit affirmed the District Court's vacatur of the $15 million jury award on the same erroneous legal proposition that the airline had a "general duty" to transport anyone presenting a ticket.

Petitioners' application for rehearing in the Second Circuit argued that "no airline has any duty to transport a person whose name is not on the non-transferable ticket . . . ." Petition for Rehearing at 14. Petitioners pointed out that enforcement of such a duty would conflict with federal criminal law. *Id.* at 14-15.

The fact that a legal proposition that conflicts with federal law was invoked to defeat, rather than to support, the plaintiffs' claims does not affect this Court's certiorari jurisdiction. The District Court and the Court of Appeals implicated federal law when they denied petitioners' claim because of a purported duty of the airlines that is flatly inconsistent with federal law. This Court reviews state-law judgments that are inconsistent with federal law. *See, e.g.*, *Rose v. Rose*, 481 U.S. 619 (1987) (state contempt order for

failure to pay child support challenged as inconsistent with federal veterans' benefits law).

II

THE DECISION BELOW WAS NOT "DEPENDENT UPON AN INTERPRETATION OF NEW YORK LAW" OR "FACTBOUND"

Icelandair misstates the rationale of the Second Circuit. The Second Circuit did not merely review the evidence in the record and find it insufficient. It invoked, as a major ground for its decision, a "general duty to receive and transport . . . paying passengers" (Pet. App. at 25a) that is facially inconsistent with the federal laws cited by the petitioners.

Icelandair argues that 49 U.S.C. § 44902 is irrelevant because it deals only with an airline's *refusal* to transport a passenger, whereas the plaintiffs' case challenges the airline's action in affirmatively transporting passengers. Brief in Opp. at 7-8. But petitioners are not seeking relief from Icelandair under 49 U.S.C. § 44902. We contend only that Section 44902 demonstrates the error of the Second Circuit's legal doctrine because the duties imposed on all airlines by Section 44902 conflict with the legal principle declared by the courts below. For the same reason, it makes no difference that 14 C.F.R. § 243.7 was not in effect at the time of the conduct that gave rise to this case. Plaintiffs are not arguing that the regulation created their cause of action. They contend only that the "general duty" articulated by the District Court and the Court of Appeals contradicts § 243.7 in all prospective applications. This creates an issue of great importance.

Finally, Icelandair disputes the recitation of facts in the petition, even though that recitation follows the facts assumed to be true by the Second Circuit and found to be true by the jury. The facts critical to our petition for certiorari are uncontested. Icelandair boarded three persons who carried

tickets in names that did not match their reservations or their travel identification. Notwithstanding that uncontested fact, the District Court and the Second Circuit held that Icelandair had a "general duty" to transport these passengers and could not, therefore, be held liable. The petition does not ask this Court to revise any factual determination made by the courts below.

III

THE ISSUES PRESENTED BY THIS CASE ARE VERY IMPORTANT TO THE WELFARE OF AMERICAN SPOUSES AND THEIR CHILDREN WHO FEAR KIDNAPPING BY A FOREIGN CITIZEN PARENT

Icelandair fails to confront the significant policy considerations presented in the petition. The International Parental Kidnapping Crime Act of 1993 proves that the removal of children from parental custody in the United States by foreign citizen parents is a subject of national concern. The Second Circuit's decision disables parents who have American custody orders from enforcing their rights and collecting damages from financially responsible entities that have knowingly participated in illegal removal of their children.

CONCLUSION

For the foregoing reasons and those set forth in the petition for writ of certiorari, the writ of certiorari should be granted.

Respectfully submitted,

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